

McGRATH NORTH

ATTORNEYS AT LAW

ORIGINAL

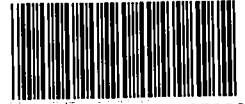
JOHN A. ANDREASEN

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May 1, 2012



SDMS DocID

2225680

VIA CERTIFIED MAIL
RETURN RECEIPT REQUEST

Ms. Joan Martin Banks (3HS62)
U.S. Environmental Protection Agency,
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

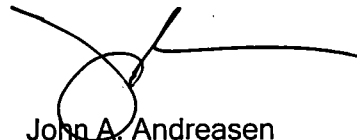
Re: Response to Information Request Pursuant to Section 104 of CERCLA
Sauer Dump Site, Dundalk (Baltimore County), Maryland

Dear Ms. Banks:

Enclosed please find ConAgra Foods, Inc.'s Response to the above-referenced information request and responsive supporting documents.

Please contact the undersigned should you have any questions regarding this matter.

Very truly yours,



John A. Andreasen

JAA:nv
Enclosures

11 CBI 11

Re: Sauer Dump Site, also known as the Cove Road Dump, and the Lynhurst Road Dump, Dundalk (Baltimore County), Maryland

RESPONSE TO INFORMATION REQUEST

General Responses and Objections

A. This Response is submitted solely in connection with the Request for Information served upon ConAgra Foods, Inc. (hereinafter referred to as "ConAgra") on or about April 2, 2012. ConAgra objects to, and would oppose, any intended or actual use by EPA or other entity of the information provided herein for any other purpose.

B. Nothing herein shall constitute an admission of liability. The information provided herein is based on information reasonably available to ConAgra, except that any information protected by the attorney-client privilege; work product immunity; or contains counsel's mental impressions, will not be produced or disclosed, consistent with the Instructions.

C. To the extent the Request for Information seeks information that is overly broad, overly burdensome, speculative, vague, ambiguous or outside the EPA's authority under CERCLA 104(e), ConAgra believes such request goes beyond its reasonable obligations, and on that basis, objects to such request.

D. This Response is the result of an investigation into historical company documents and information, as well as based upon information currently available to ConAgra. ConAgra reserves the right to revise, amend and/or update the following Response in the future, if ConAgra obtains additional relevant or responsive information. Nothing herein constitutes an admission of liability by ConAgra, or any of its subsidiaries.

Subject to, and without waiver or limitation of any of the foregoing or other potentially variable objections, ConAgra responds to the Request for Information as follows:

INTRODUCTION

ConAgra is submitting this Response in connection with the ownership and operations of Farboil Company. ConAgra is submitting this Response in good faith, and based on reasonable investigations conducted to date. In making this Response, ConAgra is not making any admission concerning its liability in connection with the Site or any other sites. ConAgra does not waive any of its rights or defenses at this Site or any other site, and responds here under a claim of business and company confidentiality and proprietary information. This Response is protected from disclosure to the maximum extent allowable pursuant to existing law.

QUESTIONS

Please provide the following information:

1. What is the current nature of your activity? What was the nature of your activity during the period 1960 to 1990? Please describe in detail if the nature of your activity changed from the period 1960 to 1990. Please provide a detailed explanation of the changes to date.

RESPONSE: Upon information and belief, Farboil Company, Inc. currently operates its business at 8200 Fischer Road, Baltimore, Maryland. ConAgra has no information as to the current nature of the activity or operations of Farboil Company.

Farboil Company, a Maryland corporation ("Farboil-Maryland"), operated a business in Baltimore, Maryland, which began in 1918. Farboil-Maryland was purchased by Beatrice Foods Co. ("Beatrice"), a Delaware corporation, in May 1968. Beatrice operated Farboil as a division until it was sold to the current Farboil Company, Inc., a Delaware corporation ("Farboil-Delaware"), in June 1985. During Beatrice's ownership of Farboil, the company was engaged in the business of manufacture of paint, marine coatings, pipe coatings and powder coatings. During Beatrice's ownership, Farboil operated from its facility at 8200 Fischer Road, Baltimore, Maryland. Upon information and belief, Farboil-Maryland had similar operations prior to Beatrice's 1968 purchase at a facility located at 801 Key Highway, Baltimore, Maryland.

2. EPA has obtained information during the course of its investigation indicating that Farboil may have produced waste which was disposed of at the Site, and/or disposed of waste at the Site referenced in this letter. Please provide the following information regarding all wastes and by-products produced by you during the period 1960 to 1990:
 - a. The nature of each "waste" (as the term "waste" is defined in paragraph 6 of the definitions attached hereto) used including its chemical content, characteristics and physical state (i.e., liquid, solid, gas, or in the form of contaminated rags, cups, containers). Provide chemical analyses and Material Safety Data Sheets ("MSDS"). If these analyses are not available for the period 1960 through 1990, submit analyses for the time period closest to these dates and describe, in detail, any changes in the process(es) in which these wastes were produced that would affect the chemical analyses;
 - b. The annual quantity of each "waste" used or generated;
 - c. The process(es) in which each "waste" was used or the process(es) that generated each;
 - d. The types of containers used to treat, store or dispose of each "waste"; and
 - e. The method of treatment and/or disposal of each "waste."

RESPONSE: ConAgra does not have accurate information regarding the history/operations of the Farboil Company. ConAgra does not have any records regarding manufacturing or waste disposal procedures and practices responsive to this Request. To the extent such records exist, they were transferred to Farboil-Delaware in connection with the sale in June 1985.

3. Provide the names, titles, areas of responsibility, addresses and telephone numbers of all personnel during the period of 1960 to 1990 who may have:
 - a. Disposed of or treated "waste" at the Site;
 - b. Arranged for the disposal or treatment of "waste" at the Site; and
 - c. Arranged for the transportation of "waste" to the Site (either directly or through transshipment points) for disposal or treatment.

RESPONSE: See Response to Question 2.

4. Describe the methods used by you to dispose and/or treat "waste" during the period 1960 to 1990.

RESPONSE: See Response to Question 2.

5. If your response to Question 4 includes the contracting of a hauler or transporter to transport and/or dispose of wastes, explain the arrangements for those transactions and provide documentation that confirms the nature of those transactions.

RESPONSE: See Response to Question 2.

6. Did your activity make arrangements with any of the following companies: Robb Tyler, Inc., Herb Robertson, Modern Trash, Modern, Inc., North Point Trash Removal, Warren Parker Hauling, Refuse Disposal Inc., F.P.R. Bohager Company, Donald Siejack, Henry Siejack, Debris Disposal, Lawrence Jendras, Browning-Ferris Industries, Jerome Cross, Cross Efficient Trash Removal Service, Inc., F.A. Sauer & Son, and Modern Trashmoval, Inc. to transport and/or dispose of wastes?

If so, identify:

- a. The persons with whom you, or such other persons, made such arrangements;
- b. Every date on which such arrangements took place;
- c. For each transaction, the nature and quantity of the "waste" including the chemical content, characteristics, physical state (i.e., liquid, solid), and the process for which the substance was used or the process that generated the substance;
- d. Precise locations at which each "waste" was disposed or treated;
- e. The persons who selected the Site as the place at which "waste" was disposed or treated;
- f. The final disposition of each of the "wastes" involved in such transactions; and
- g. The names of employees, officers, owners and agents for each transporter.

RESPONSE: Based upon information provided by others, ConAgra states that Farboil-Maryland and/or Beatrice's Farboil division may have contracted with Robb Tyler, Inc., F.P.R. Bohager Company and F.A. Sauer & Son to transport and/or dispose of wastes during the period 1960 to 1985. ConAgra does not have any other information responsive to this Request.

7. For each and every instance in which your activity arranged for disposal or treatment of "waste" at the Site identify:
- a. The characteristics, physical state (i.e., liquid, solid) and chemical composition of each "waste";

- b. The persons who supplied you with "waste" material disposed or otherwise handled by you;
- c. How such "wastes" were used, treated, transported, disposed or otherwise handled by you;
- d. When and where such "wastes" were used, treated, transported, disposed or otherwise handled by you;
- e. The quantity (number of loads, gallons, drums) of the "wastes" which were used, treated, transported, disposed or otherwise handled by you; and
- f. Any billing information and documents (invoices, trip tickets, manifests) in your possession regarding arrangements made with your activity to generate, treat, store, transport or dispose of "wastes" at the Site.

RESPONSE: See Responses to Questions 2 and 6.

8. Provide the names, titles and areas of responsibility of any persons, including all present and former employees, who may be knowledgeable of your waste disposal practices, whether or not involving disposal at the Site, during the period 1960 to 1990. Include current addresses and dates of birth for former employees.

RESPONSE: Upon information and belief, ConAgra responds as follows¹:

- (1) Joseph Stepcich
Corporate Secretary/Director of Finance & Administration
Farboil Company
8200 Fischer Road
Baltimore, Maryland
(410) 477-8200
- (2) Ron Stuchinski
Former Farboil Company Supervisor
Address Unknown
(410) 477-8200
- (3) Ed Butch
Former Farboil Plant Manager
Address Unknown
Telephone Number Unknown
- (4) Dave Cook
Former Farboil Company Technical Services Department
Address Unknown
[REDACTED]

¹ Contact information is based upon last known information as of 1994.

- (5) Ken Hershner
Former Farboil Company Shipping Department
Address Unknown
[REDACTED]
- (6) Dan Howard
Former Farboil Company Maintenance/Plant Engineering Supervisor
Address Unknown
[REDACTED]
- (7) Arnold Jackson
Farboil Company Position Unknown
Address Unknown
[REDACTED]
- (8) Joe Picano
Former Farboil Company General Manager
Address Unknown
[REDACTED]

9. Describe any permits or applications and any correspondence between you and any regulatory agencies regarding "wastes" transported to or disposed of at the Site.

RESPONSE: See Response to Question 2.

10. Provide copies of any correspondence between you and any third party regarding "wastes" transported to or disposed of at the Site.

RESPONSE: See Response to Question 2.

11. Provide the identity of, and copies of any documents relating to, any other person who generated, treated, stored, transported or disposed, or who arranged for the treatment, storage, disposal or transportation of such "wastes" to the Site.

RESPONSE: In August 2009, ConAgra was provided copies of certain waste haul tickets and unidentified ledger sheets by a PRP Group that has organized with respect to the 68th Street Dump Site, Rosedale, Maryland. Copies of said documents are enclosed as CAG 00001-CAG 00005. See also Response to Question 2.

12. Provide the identities of all predecessors in interest who, during the period 1960 to present, transported to, stored, treated or otherwise disposed of any "wastes" at the Site and describe in detail the nature of your predecessor in interest's business. Describe all changes in ownership from 1960 to the present, including the date of the ownership change and identify the type of change (i.e., asset purchase, corporate merger, consolidation, and name change). Provide a copy of each asset purchase and merger agreement.

RESPONSE: See Responses to Questions 1 and 2. A copy of the May 1968 merger agreement in connection with the 1968 sale referenced in Response 1 is enclosed as CAG 00006-CAG 00058.

13. Provide the name, title, address, and telephone number of the person answering these questions on behalf of the respondent.

RESPONSE:

Kenneth Anderson
Authorized Representative
ConAgra Foods, Inc.
P.O. Box 3010
St. Charles, IL 60174
Telephone: (630) 857-1453

John Andreasen
Attorney at Law
McGrath North Mullin & Kratz, PC LLO
First National Tower, Suite 3700
1601 Dodge Street
Omaha, NE 68102
Telephone: (402) 341-3070
Facsimile: (402) 341-0216
jandreasen@mcgrathnorth.com

14. For each question, provide the name, title, area of responsibility, current address and telephone number of all persons consulted in the preparation of the answers.

RESPONSE: See Response to Question 13.

15. If you have reason to believe that there may be persons able to provide more detailed or complete responses to any question contained herein or who may be able to provide additional responsive documents, provide the names, titles, areas of responsibility, current addresses, and telephone numbers of such persons and describe the additional information or documents they may have.

RESPONSE: See Response to Question 8.

16. For each and every question contained herein, if information or documents responsive to this Information Request are not in your possession, custody or control, then provide the names, titles, areas of responsibility, current addresses, and telephone numbers of the persons from whom such information or documents may be obtained.

RESPONSE: See Responses to Questions 2 and 8.

17. If you have any information about other parties who may have information which may assist the Agency in its investigation of the Site or who may be responsible for the generation of, transportation to or release of contamination at the Site, please provide such information. The information you provide in response to this request should include each party's name, address, type of business and the reasons why you believe the party may have contributed to the contamination at the Site or may have information regarding the Site.

RESPONSE:

Farboil Company
8200 Fischer Road
Baltimore, Maryland 21222
Telephone: (410) 477-8200

DECLARATION

I declare under the penalty of perjury that I am authorized to respond on behalf of ConAgra Foods, Inc. and that the foregoing is complete, true and correct.

Executed on APRIL 24, 2012.

Kenneth Anderson
Signature

KENNETH ANDERSON
Name

AUTHORIZED REPRESENTATIVE
Title

MURDOCK 6-6161 SERVICE TICKET I- 94487

ROBB TYLER INC.

Modern Trash and Refuse Removal Service

NEAR PULASKI HWY. AND 66TH STREET
BALTIMORE 6, MD.

DATE 11-6-63

(6)

FARBOLTAINTS

15.00

DRIVER *Joseph Robinson*

TIME OUT	CONTAINERS DUMPED	REFILLS	CONTAINERS WASHED
TIME IN			

TOTAL

1- Large Haul

REMARKS

Farboll Co
James G. Gyle

THE ABOVE SERVICES
HAVE BEEN PERFORMED

CUSTOMER'S SIGNATURE

FORM 2

"We Never Refuse Refuse"

MURDOCK 6-6161 SERVICE TICKET I- 98713

ROBB TYLER INC.

Modern Trash and Refuse Removal Service

NEAR PULASKI HWY. AND 66TH STREET
BALTIMORE 6, MD.

DATE 11-14-63

FARBOLTAINTS

15.00

DRIVER *Joseph Robinson*

TIME OUT	CONTAINERS DUMPED	REFILLS	CONTAINERS WASHED
TIME IN			

TOTAL

1- Large Haul

REMARKS

Farboll Co
James G. Gyle

THE ABOVE SERVICES
HAVE BEEN PERFORMED

CUSTOMER'S SIGNATURE

FORM 2

"We Never Refuse Refuse"

CAG 00001

BF14074

MURDOCK 6-6161

SERVICE TICKET I- 97809

ROBB TYLER INC.*Modern Trash and Refuse Removal Service*NEAR PULASKI HWY. AND 66TH STREET
BALTIMORE 6, MD.

DATE 11-9-63

FARROIL PAINT 1500
L.M.DRIVER *Joseph Robinson*

TIME OUT	CONTAINERS DUMPED	REFILLS	CONTAINERS WASHED
TIME IN			
TOTAL	1- Large Barrel		

REMARKS

THE ABOVE SERVICES
HAVE BEEN PERFORMED

CUSTOMER'S SIGNATURE

FORM 2 "We Never Refuse Refuse"

MURDOCK 6-6161

SERVICE TICKET J- 01817

ROBB TYLER INC.*Modern Trash and Refuse Removal Service*NEAR PULASKI HWY. AND 66TH STREET
BALTIMORE 6, MD.

DATE 11-19-63

FARROIL PAINT 1500
L.M.DRIVER *Joseph Robinson*

TIME OUT	CONTAINERS DUMPED	REFILLS	CONTAINERS WASHED
TIME IN			
TOTAL	1- Large Barrel		

REMARKS

THE ABOVE SERVICES
HAVE BEEN PERFORMED

CUSTOMER'S SIGNATURE

FORM 2 "We Never Refuse Refuse"

CAG 00002

BF14075

MURDOCK 6-6161

SERVICE TICKET J-03483

ROBB TYLER INC.*Modern Trash and Refuse Removal Service*NEAR PULASKI HWY. AND 66TH STREET
BALTIMORE 6, MD.

DATE 1-27-63

FARBOIL PAINT

15.⁰⁰DRIVER *Edward C. Adams*

TIME OUT	CONTAINERS DUMPED	REFILLS	CONTAINERS WASHED
TIME IN			

TOTAL 1 - Large Barrel

REMARKS

THE ABOVE SERVICES
HAVE BEEN PERFORMED

CUSTOMER'S SIGNATURE

FORM 2

"We Never Refuse Refuse"

SERVICE TICKET J-04445

MURDOCK 6-6161

ROBB TYLER INC.*Modern Trash and Refuse Removal Service*NEAR PULASKI HWY. AND 66TH STREET
BALTIMORE 6, MD.

DATE 11-27-63

FARBOIL PAINT

15.⁰⁰DRIVER *Edward C. Adams*

TIME OUT	CONTAINERS DUMPED	REFILLS	CONTAINERS WASHED
10:30			
TIME IN			

TOTAL

REMARKS

THE ABOVE SERVICES
HAVE BEEN PERFORMED

CUSTOMER'S SIGNATURE

FORM 2

"We Never Refuse Refuse"

CAG 00003

BF14076

18697	DURA TITE SCREW CO OF MD	8211	2	2870	2000	
18697	DURA TITE SCREW CO OF MD	11054	3	3170	7100	11100
18887	EARNEST HESSE OFFICE HLD	8218	2	2870	4000	
18887	EARNEST HESSE OFFICE HLD	11061	3	3170	3423	7423
18911	EAST COAST FREIGHT LINES	8220	2	2870	2000	
18911	EAST COAST FREIGHT LINES	11063	3	3170	2000	4000
19125	EASTSIDE COFFEE SHOP	8231	2	2870	2000	
19125	EASTSIDE COFFEE SHOP	11075	3	3170	2000	4000
19158	ECLIPSE SLEEP PRODUCTS	8232	2	2870	54000	
19158	ECLIPSE SLEEP PRODUCTS	11076	3	3170	46000	100000
19364	EDISON ESSO	8239	2	2870	2846	
19364	EDISON ESSO	11084	3	3170	4000	6846
19455	EICHORN FOODS INC	2513	12	3169	4000	
19455	EICHORN FOODS	CASH	1	2870	3000CR	
19455	EICHORN FOODS INC	11088	3	3170	4000	5000
19596	ELECTRONIC WHOLESALERS	8249	2	2870	4000	
19596	ELECTRONIC WHOLESALERS	11094	3	3170	4000	8000
19794	ELKTON TRUCKING CO	8256	2	2870	2000	
19794	ELKTON TRUCKING CO	11101	3	3170	2000	4000
19869	KOPPERS COMPANY INC	8257	2	2870	22500	
19869	KOPPERS COMPANY INC	11102	3	3170	24300	46800
19893	ELCT CY AMER LEGION 279	8258	2	2870	2000	
19893	ELCT CY AMER LEGION 279	11103	3	3170	1368	3368
20065	ENSOR BROS ICE CO	8265	2	2870	2000	
20065	ENSOR BROS ICE CO	11109	3	3170	2000	4000
20669	RELIABLE STORES INC	8298	2	2870	3500	
20669	RELIABLE STORES INC	11143	3	3170	5600	9100
21048	FAIRLAWN TOOL & DIE	CASH	1	1470	9600CR	
21048	FAIRLAWN TOOL & DIE CO	5467	1	3170	800	
21048	FAIRLAWN TOOL & DIE CO	8321	2	2870	800	
21048	FAIRLAWN TOOL & DIE CO	11166	3	3170	1100	6900 CR
21162	FARBOIL PAINT		3	1070	4000CR	

VTN 9-01204

211 8-1

CR 2M BRICK SHEDS INC 2M

CAG 00004

0300556

21162	PAINT CO	11173	3	3170	40800	36800
21253	FEDERAL YEAST CORP	8332	2	2870	59600	
21253	FEDERAL YEAST CORP	11177	3	3170	59500	119100
21386	FERRATTI LIQUORS		1	3170	34200	
21386	FERRATTI LIQUORS	CASH	2	2770	25000	
21386	FERRATTI LIQUORS	8337	2	2870	1900	
21386	FERRATTI LIQUORS	11182	3	3170	1900	39500
21444	FIDELITY STORAGE CO	8342	2	2870	1142	1142
21519	COLDSTREAM PARK APTS	8348	2	2870	12000	
21519	COLDSTREAM PARK APTS	11193	3	3170	12000	24000
21717	F S FISKE CO	5506	1	3170	3500	
21717	F S FISKE CO	8360	2	2870	3500	
21717	F S FISKE CO	11205	3	3170	3500	10500
21733	ASSEMBLY DIVISION	8361	2	2870	237000	
21733	ASSEMBLY		3	1270	9500	
21733	ASSEMBLY		3	2070	390000	
21733	ASSEMBLY DIVISION	11207	3	3170	415000	622500
21741	ASSEMBLY DIVISION	8362	2	2870	147000	
21741	ASSEMBLY DIVISION	11208	3	3170	480400	627400
21790	FLAMMING PIT	8365	2	2870	27000	
21790	FLAMMING PIT	11211	3	3170	28200	55200
21808	FLAG COURT PHARMACY	8366	2	2870	2175	
21808	FLAG COURT PHARMACY	11212	3	3170	2175	4350
21873	FLORIDA FOOD PRODUCTS IN	8370	2	2870	75000	
21873	FLORIDA FOOD PRODUCTS IN	11216	3	3170	60000	135000
22186	FT MC HENRY LUMBER CO	8379	2	2870	6600	
22186	FT MC HENRY LUMBER CO	11227	3	3170	5100	11700
22202	FORT MC HENRY LUMBER CO	8380	2	2870	57400	
22202	FORT MC HENRY LUMBER CO	11228	3	3170	65800	123200
22269	THE FORUM	8384	2	2870	2000	
22269	THE FORUM	11232	3	3170	2968	4968
22327	FOUR SEASONS COFFEE SHOP	8388	2	2870	1750	

CAG 00005

0300557

AGREEMENT AND PLAN OF REORGANIZATION

This Agreement and Plan of Reorganization dated November 22, 1967, is by and between BEATRICE FOODS CO., a Delaware corporation (Beatrice), and THE FARBOIL CO., a Maryland corporation (the Company).

The Company wishes to transfer its business and substantially all of its assets to Beatrice solely in exchange for voting shares of Beatrice and the assumption by Beatrice of certain of the liabilities of the Company as herein provided in a transaction which qualifies as a reorganization under the provisions of Section 368(a)(1)(C) of the Internal Revenue Code of 1954, it being contemplated by the Company that it will thereafter, as an integral part of the transaction, distribute all of said shares of Beatrice to the stockholders of the Company; and

Beatrice wishes to acquire substantially all of the assets and business of the Company and to assume certain of the liabilities of the Company, all as hereinafter more fully set forth;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, Beatrice and the Company approve and adopt this Agreement as a plan of reorganization, and mutually covenant and agree as follows:

1. On the terms and subject to the conditions herein expressed, the Company agrees to convey, transfer, set over and deliver to Beatrice on the Closing Date (hereinafter defined in paragraph 3) all of the assets and business then

owned by the Company, real, personal or mixed, tangible and intangible, of every kind, nature and description, and wherever situate (and whether or not carried and reflected on the books of the Company at the Closing Date or on the balance sheets of the Company as defined in paragraph 7(a) hereof), including, without limitation, cash on hand and in banks, real estate, leases, machinery and equipment, furniture and fixtures, accounts, notes and loans receivable, investments, including but not restricted to all shares of stock of or interests in other corporations owned by the Company, deposits, inventories, supplies, prepaid insurance and other prepaid expenses, choses in action, claims and causes of action or rights of recovery or set-off of every kind and character, inventions, patents, patent rights, trademarks, trademark rights, trade names, licenses, copyrights, stationery and other imprinted material and office supplies, the right to receive mail and other communications and shipments of merchandise addressed to the Company, the right to endorse on the Company's behalf, and deposit, checks to the Company's order received by Beatrice after the Closing, its good will as a going concern, and the right to use the name "The Farboil Co." and any derivation or modification thereof, and all other interests to which the Company has any right of ownership, use, or otherwise, or in which the Company has a conveyable or assignable interest on the Closing Date, except its corporate books and records, its stock records, its rights under this Agreement, and the leasehold property located at 801 Key Highway, Baltimore, Maryland.

2. In exchange for the business and assets of the Company to be acquired by Beatrice hereunder, and on the terms

and subject to the conditions herein expressed, Beatrice covenants and agrees:

(a) At the Closing on the Closing Date, to deliver to the Company two certificates registered in the name of the Company representing in the aggregate 101,695 shares of Beatrice's fully paid and nonassessable voting common stock without par value (the Common Stock). One certificate shall be for four thousand (4,000) of the shares being delivered; and the other certificate shall be for the balance. In the event Beatrice declares any stock dividends or stock splits before the Closing Date, the number of shares to be delivered shall be proportionately adjusted.

(b) At the Closing on the Closing Date, to assume all liabilities of the Company remaining unpaid on the Closing Date (i) which are reflected on the balance sheet of the Company as of September 30, 1967, (ii) which have been incurred by the Company in the ordinary course of its business, including, but not limited to, all taxes, subsequent to that date up to and including the Closing Date, and (iii) which are disclosed in the Letter (as defined in paragraph 7(b) hereof); provided, however, that Beatrice shall not assume or pay (A) any United States, foreign or state income, sales, or use taxes to the extent such are applicable to, imposed upon or arise out of the transfer of assets to Beatrice contemplated by this Agreement, (B) any liability of the Company insured against, to the extent such liability is or will be payable by an insurer, and (C) any liability or obligation of the Company for expenses and costs of brokers' and finders' fees and attorneys' fees incurred by it in connection with this Agreement and the transactions contemplated herein.

3. (a) The Closing shall take place on the Closing Date at the offices of the Company, 8200 Fischer Road, Baltimore, Maryland at 9:30 A.M., Baltimore time, or such other time and place as the parties may agree upon in writing. The Closing Date shall be the business day designated by Beatrice (and Beatrice agrees so to designate) between April 1 and 15, 1968 provided that all of the following shall have occurred prior to that date:

(1) The approval, upon official notice of issuance, by the New York Stock Exchange of the listing by Beatrice on such Exchange of the shares of Common Stock to be delivered hereunder on the Closing Date. Beatrice, at its expense, will use its best efforts to effect such listing on or before April 1, 1968 and the Company agrees to furnish such financial statements, information, and certificates with respect thereto as Beatrice may require in connection with such listing.

(ii) The receipt by or on behalf of the Company of a favorable written ruling or rulings by the Internal Revenue Service holding that (A) the consummation of the transactions contemplated by this Agreement will constitute a reorganization as defined in Section 368(a)(1)(C) of the Internal Revenue Code of 1954; (B) no gain or loss will be recognized to the Company upon the receipt of Beatrice's Common Stock in exchange for its business and substantially all of its assets as contemplated in this Agreement; (C) no gain or loss will be recognized to the stockholders of the Company upon exchange by such stockholders of a portion of their shares of the capital stock of the Company for the shares of Common Stock of Beatrice received by the Company pursuant hereto; (D) the basis to Beatrice of the assets of

the Company acquired by it hereunder will be the same as the cost or other basis to the Company for such assets; (E) the basis of the shares of Beatrice Common Stock received by a stockholder of the Company shall be the same as the cost or other basis of his shares in the Company which are surrendered by such stockholder to the Company; and (F) upon the subsequent sale or exchange of the Beatrice Common Stock received by a stockholder of the Company, the holding period of such shares of Beatrice Common Stock will include the period during which such stock of the Company was held by such stockholder. The Company will prepare and forward to the Internal Revenue Service promptly after the execution of this Agreement its request for such a ruling and will use its best efforts to obtain such ruling prior to April 1, 1968. The Company will furnish Beatrice with a copy of all communications relating to such ruling and ruling request, will keep Beatrice fully advised as to the status of such ruling and ruling request and will upon receipt of such favorable ruling, promptly give written notice of such receipt to Beatrice. The Company agrees that the ruling of the Commissioner of Internal Revenue referred to in this paragraph 3(a)(ii) shall not be unfavorable solely because it contains the following statements or statements of substantially similar import:

(A) "No opinion is expressed as to the effect for federal income tax purposes of the non-competitive agreements between Beatrice and the Company and any of the stockholders of the Company"; and

(B) "No opinion is expressed as to the tax treatment of the transaction under the provisions of any other sections of the Code and Regula-

tions which may also be applicable thereto (other than those under which the above rulings were requested) or to the tax treatment of any conditions existing at the time of, or effects resulting from, the transactions which are not specifically covered by the above rulings."

(iii) The ruling referred to in paragraph 3(a)(ii) shall be deemed not to be favorable if, as valued by Beatrice and the Company as of the Closing Date, the assets of the Company to be transferred to Beatrice pursuant to this Agreement represent less than 90% of the fair market value of the net assets or less than 70% of the fair market value of the gross assets held by the Company immediately prior to the transfer. The consummation of this Agreement shall be conclusive evidence that such value exceeds 90% and 70%, respectively, of the Company's assets.

(b) If the requirements referred to in subparagraphs 3(a)(i) and (ii) shall not have been satisfied prior to April 1, 1968, the Closing Date shall be postponed until the tenth business day following the date both requirements are satisfied; provided, however, that this Agreement shall be null and void and neither party shall have any liability to the other unless the Closing Date occurs on or before March 1, 1969.

4. At the Closing on the Closing Date:

(a) The Company shall deliver to Beatrice (i) such instruments of assignment, transfer, conveyance, endorsement, direction, or authorization as will be sufficient or requisite, in the opinion of Beatrice and its counsel, to vest in Beatrice, its successors and assigns, the full, complete,

absolute, legal and equitable title in and to all of the assets, business, and property of the Company described in paragraph 1 hereof, (ii) the various documents referred to in paragraph 14 hereof, (iii) assignments of the various franchises, leases, contracts, and commitments and consents thereto referred to in paragraph 5 hereof, and (iv) such evidences as counsel for Beatrice may reasonably require as to the Company's compliance with those provisions of the Maryland law which relate to the change of its corporate name and the sale of all or substantially all of its assets.

(b) Beatrice shall deliver to the Company (1) the certificates representing the number of shares of Beatrice's Common Stock, provided to be delivered to the Company under paragraph 2(a) hereof, (ii) the documents referred to in paragraph 15 hereof, and (iii) a document or documents evidencing the assumption by Beatrice of the liabilities, franchises, leases, contracts, and commitments of the Company provided to be assumed by Beatrice in paragraphs 2(b) and 5 hereof and the agreement by Beatrice to indemnify and hold the Company and its stockholders harmless from any such liability.

(c) The Company will execute and deliver to Robert W. France, as escrowee herein (together with any other or successor escrowee, called Escrowee), or to such other person as Escrowee, who may at that time be the Treasurer of Beatrice, a letter of direction (hereinafter called Letter of Direction) in the form attached hereto as Exhibit A and shall simultaneously therewith deposit with said Escrowee the certificate for 4,000 shares (duly endorsed in blank or

with a stock power attached thereto duly endorsed in blank, in either case with the signature guaranteed) representing a portion of the shares of Common Stock delivered to the Company pursuant to paragraph 2(a) hereof.

In the event the Company wishes to include the shares of Common Stock to be held in escrow hereunder in any distribution to its stockholders there may be a substitution in such escrow of certificates (together with appropriate stock powers duly endorsed in blank with the signatures guaranteed) representing such shares registered in the names of not more than six adult persons to whom such shares were distributed. If such escrow includes shares distributed by the Company to its stockholders, then the registered owners of such shares shall be substituted for and in place of the Company as parties to said escrow, provided that such substitution shall in no way impair the rights of Beatrice against said escrowed shares. In the event of such a substitution all of the registered owners of the substituted certificates shall join at the time of such substitution in the designation, in writing, of a person to act for and represent them under this escrow and such person shall be conclusively presumed to be authorized to act for and represent the Company and said registered owners with respect to such shares hereunder, and all notices hereunder with respect to such shares shall thereafter be directed by Beatrice to such designated person and any determination or decision of such designated person with respect to the subject to the escrow or liability of the Company hereunder shall bind all such registered owners and the Company.

The shares of Beatrice's Common Stock so deposited

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with the Escrowee shall be retained by the Escrowee as security for the Company's agreements of indemnification set forth herein. The escrow with respect to such shares shall terminate at the earlier to occur of (i) such time as the federal income tax returns of the Company have been examined and its federal income taxes finally determined by the Internal Revenue Service for the year ended September 30, 1967 and all years prior thereto or (ii) four years from the Closing Date. Upon termination of the escrow, all shares then held in escrow shall be distributed by the Escrowee to the then registered holder or holders thereof. As used herein the term "finally determined" shall include receipt of a report from the Internal Revenue Service indicating no additional tax is due for such years or execution by the Company of a waiver of restriction on assessment of taxes and payment of taxes so assessed.

The shares of Beatrice's Common Stock escrowed as aforesaid shall, until recourse thereto is required for indemnification as aforesaid or until delivered out of escrow, remain registered in the name of the Company or the stockholders substituted for the Company as aforesaid so that the Company or the stockholders substituted for the Company as aforesaid shall be entitled to vote the same and receive dividends thereon subject to the terms and provisions of this Agreement and the Letter of Direction. So long as such escrow continues, the registered holder or holders of all such escrowed shares shall deposit in said escrow any additional shares which they may be entitled to receive in respect of the escrowed shares by way of conversion, stock dividend, stock split, reclassification, recapitalization, or corporate reorganization. Beatrice will bear all expenses of the Escrowee, including counsel fees.

Any person having a beneficial interest in the escrow may substitute in lieu of Common Stock securities (other than Common Stock) or cash with a value equivalent to such interest.

Beatrice guarantees the due performance by the Escrowee of his obligations to the depositors of the escrowed shares under the terms of the escrow.

5. At the Closing on the Closing Date the Company will assign to Beatrice, and Beatrice will assume and agree to perform all of the then outstanding franchises, leases, contracts, and commitments of the Company referred to in the Letter and (i) and (ii) of (k) of paragraph 8 hereof. In each case where the contractual rights of the Company are not assignable by the Company to Beatrice without the consent of the other contracting party, the Company will obtain and deliver to Beatrice at the Closing the written consent of such other contracting party to the assignment of such rights to Beatrice. Anything in this paragraph to the contrary notwithstanding, Beatrice shall not assume, and does not agree to perform, any contracts or commitments of the Company referred to in clauses (A) through (C) of paragraph 2(b) hereof.

6. The Company covenants and agrees as follows:

(a) As promptly as possible, but in no event later than December 1, 1967, the Company will deliver to Beatrice, at Beatrice's expense:

(i) with respect to each parcel of real estate described in the Letter as owned by the

Company an owner's preliminary report on title covering a date subsequent to the date hereof issued by a title insurance company acceptable to Beatrice with a commitment of such company to issue an owner's title insurance policy on the ALTA 1962 Owner's Form, with extended coverage endorsement guaranteeing over the standard exceptions to title customarily contained in such policies insuring the fee simple title of the Company in each such parcel of real estate in the amount set forth in the Letter following the description of such parcel, subject only to the matters set forth in the Letter; and

(ii) a survey certified by a registered land surveyor as of a date subsequent to the date hereof of each parcel of real estate described in the Letter as owned by the Company showing, with respect to each such parcel, (A) that the buildings, structures, and improvements thereon are located within the boundaries of said parcel and do not conflict with any "setback" lines or restrictions of record or that have been established by an applicable zoning or building code or ordinance, or any easements except as provided in the Letter, (B) that there are no encroachments upon any of such parcels by buildings, structures, improvements, or easements located upon adjoining real estate, and (C) that there is sufficient access to each of said parcels from a public street.

(b) On the Closing Date, the Company will convey the real estate owned by it and described in the Letter to Beatrice on the Closing Date by Articles of Sale and Confirmatory Deed; and title so conveyed shall be subject only to the matters referred to in the Letter. All federal documentary stamps and transfer taxes shall be borne by Beatrice.

(c) On or immediately after the Closing Date it will amend its Articles of Incorporation so as to change its corporate name to a name bearing no similarity to its present name and will thereafter cooperate with Beatrice in making its present corporate name available to Beatrice in Maryland and in each state, if any, in which the Company is licensed to transact business as a foreign corporation, and after the Closing Date the Company will not become interested (except as a stockholder of Beatrice) or engaged in any business which is competitive with any business conducted by the Company immediately prior to the Closing Date.

(d) As soon as practicable after the Closing Date, but not prior to the Closing Date, it will distribute to its stockholders in exchange for and in complete cancellation and redemption of a portion of their shares of the Company, the shares of Common Stock received by the Company pursuant to the terms hereof and all other assets then owned by the Company; and Beatrice shall not be required to issue any fractional shares of Common Stock in connection with such distributions.

(e) Upon the request of Beatrice at any time following the Closing Date, and from time to time thereafter,

it will forthwith execute and deliver such further instruments of assignment, transfer, conveyance, endorsement, direction, or authorization as Beatrice or its counsel may reasonably request in order to perfect the title of Beatrice, its successors and assigns, in and to the business and assets provided to be transferred to Beatrice hereunder.

7. The Company has heretofore delivered to Beatrice:

(a) The balance sheets of the Company as of September 30, 1964, 1965, 1966, and 1967 and the statement of profit and loss of the Company for the years then ended. Each of the above mentioned financial statements (the Financial Statements) of the Company was prepared by C. W. Amos & Company, certified public accountants, in the case of 1964 and 1965 and by Ernst & Ernst, certified public accountants, in the case of 1966 and 1967; and each is identified by the signature of the President of the Company.

(b) A letter (the Letter) of even date herewith addressed to Beatrice and signed on behalf of the Company by the President thereof and receipted for by Beatrice.

8. The Company warrants and represents to and covenants with Beatrice, its successors and assigns (which warranties, representations, and covenants shall survive the Closing regardless of what investigations Beatrice shall have made with respect thereto prior to the Closing) that, except as stated in the Letter:

(a) The Company is a corporation duly organized, validly existing, and in good standing under the

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laws of the State of Maryland, is qualified to do business in the States of Alabama, California, New York, Pennsylvania, and Virginia, and, to the best of its knowledge, is not required to be qualified to do business as a foreign corporation under the laws of any state.

(b) The Company does not own any capital shares in any corporation and is not a participant in any joint venture and owns no interests in any other company, except for Marvel Constructors Construction, Inc., and Rim Research Corporation, both of which are wholly owned Maryland corporations and are included in the financial statements for the years ended September 30, 1966 and 1967. They are the only companies so consolidated.

(c) The Company is authorized to issue 1,000 shares of preferred stock, 10 of which are issued and outstanding, 1,700 shares of Class A common stock, 1,058 of which are issued and outstanding, and 862-2/3 shares of Class B common stock, 301-2/3 of which are issued and outstanding, and the Company has no other outstanding securities. Pending the Closing the Company will not (i) issue or sell or contract to issue or sell any securities, (ii) reacquire any of its outstanding securities, or (iii) grant any options, warrants, or other rights to purchase any of its securities. The outstanding shares of stock of the Company are held by the stockholders of the Company in the amounts set forth in Exhibit B attached hereto.

(d) Except for the ownership of shares in the Company, no officer, director, or stockholder of the

Company, nor any person who would be an heir or descendant of such officer, director, or stockholder if he were not then living, (i) has any direct or indirect interest (except through ownership of securities of corporations listed on a national securities exchange or registered under the Securities Exchange Act of 1934) in (A) any entity which does business with the Company or is competitive with its business or (B) any property, asset, or right which is used by the Company in the conduct of its business, or (ii) has any contractual relationship with the Company.

(e) On September 30, 1967 the Company had, and on the Closing Date will have, good and marketable title to all of the properties and assets reflected in its balance sheet as of that date (except as to personal property only, as the same may have been sold or otherwise disposed of after that date in the ordinary course of business, and except as to real estate, for installments of general real estate taxes not then payable and any other matters referred to in the Letter, with respect to which the Company warrants that none interferes with the efficient operation of the business of the Company), subject to no mortgages, pledges, liens, encumbrances, or other charges of any kind; except as aforesaid, the assets, property, and business of the Company to be transferred and conveyed to Beatrice on the Closing Date shall be free and clear of mortgages, pledges, liens, encumbrances, or charges of any kind; and the real estate described in the Letter is the only real estate in which the Company has any right, title, or interest, except for the property located at 801 Key Highway, Baltimore, Maryland, which the Company will retain.

(f) Since September 30, 1967 there has been no material adverse change in the financial condition, assets, liabilities, business, or property of the Company.

(g) There is no litigation at law or in equity, and no proceedings before any Commission or other administrative or regulatory authority, pending, or to the Company's knowledge threatened, against or affecting the business or property of the Company or its right to carry on its business as conducted on September 30, 1967 and on the date hereof.

(h) Since September 30, 1967 there have been, and prior to the Closing on the Closing Date there will be, no dividends or other distributions declared or paid in respect of any of the shares of the capital stock of the Company, except for an aggregate of Sixty Dollars (\$60.00) in dividends on the preferred stock.

(i) Since September 30, 1967 the Company has not sold or otherwise disposed of, and pending the Closing will not sell or otherwise dispose of, without the prior written consent of Beatrice, any of its properties whatsoever except for the sale or other disposition of personal property in the ordinary course of business.

(j) Since September 30, 1967 the business of the Company has been, and pending the Closing will be, conducted only in the ordinary course; no change has been made or will be made in the Articles of Incorporation of the Company, and no increase has been or will be made in the compensation due to any executive or officer of the

Company, and pending the Closing no contract or commitment shall be entered into by or on behalf of the Company without the written consent of Beatrice, except for normal purchase and sale commitments entered into in the ordinary course of business.

(k) The Company is not obligated, and on the Closing Date will not be obligated, under any contract, agreement, purchase, sale, or other commitment, guaranty, distributorship, franchise or similar agreement, patent or trademark licensing agreement (either as licensor or licensee), lease (either as lessor or lessee), collective bargaining agreement, pension, profit sharing, retirement or bonus plan agreement or arrangement, deferred compensation agreement, or option to purchase shares or assets of the Company, either oral or written, except (i) normal purchase and sale commitments heretofore or hereafter entered into in the ordinary course of business, and (ii) such as are specifically approved in writing by Beatrice.

(l) A true and complete schedule setting forth all patents, trademarks, trade names, brand names, and copyrights, and all pending applications and applications to be filed, if any, therefor, owned by the Company, together with a summary description and full information in respect of the filing, registration, or issuance thereof is contained in the Letter. No licenses, sub-licenses, covenants, or agreements have been granted or entered into by the Company in respect of any of such patents, trademarks, trade names, brand names, copyrights, applications, or licenses described in the Letter. No other patents, trademarks, trade names,

brand names, copyrights, licenses, or applications are necessary for the conduct of the business of the Company as now conducted. To the best of the Company's knowledge, the Company validly owns the entire right, title, and interest in and to any and all inventions, processes, know-how, formulae, and trade secrets which are necessary for the conduct of its business as now conducted, and all such rights listed in the Letter are valid and in good standing and free and clear of all liens and encumbrances of every nature, are not currently being challenged in any way and not involved in any pending or threatened interference proceeding. The operations of the Company, the manufacture, use, and sale by the Company of its products, the use by the Company of its machinery, equipment, and processes, the use of the products of the Company by its customers for the purpose for which sold, and the use of the patents, trademarks, trade names, brand names, inventions, applications, licenses and advertising, technical or other literature of the Company do not involve infringement or claimed infringement of any proprietary right, patent, trademark, trade name, or copyright of others.

No director, officer, stockholder, or employee of the Company owns, directly or indirectly, in whole or in part, any invention, patent, proprietary right, trademark, trade name, brand name, or copyright or application therefor (i) which the Company is presently using, (ii) the use of which is necessary for its business as now conducted, or (iii) which pertains to the art in which the Company is engaged.

(m) To the best of the Company's knowledge, the Company is not, and on the Closing Date will not be, in default under or in breach of the terms or conditions of any contract, commitment, or arrangement to which it is a party.

(n) The Financial Statements were prepared in accordance with generally accepted accounting principles consistently applied and, subject to any Internal Revenue Service adjustments which have been made, fairly present (i) the financial position of the Company as of the dates thereof and (ii) the results of the operations of the Company for the periods covered thereby.

(o) At least ninety-nine percent (99%) of the inventories of the Company shown on the latest balance sheet of the Company were on that date in good condition or usable in the ordinary course of business and each item therein was priced at the lower of cost or market on a first-in-first-out basis, and as to the classes of items inventoried and methods of counting and pricing such inventories were determined in a manner consistent with all prior years since 1960.

(p) On September 30, 1967 the Company had no liability of any nature, whether accrued, absolute, contingent, or otherwise, not disclosed or fully reflected or reserved against in its balance sheet as of that date, or fully covered by insurance.

(q) The accounts, notes, and other receivables shown on the latest balance sheet of the Company arose in the ordinary course of business, and all such accounts receivable

known by the Company to be uncollectible in the ordinary course of business were either not included therein or were adequately reserved against therein.

(r) To the best of the Company's knowledge, proper and accurate foreign, federal, and state tax returns, reports, and estimates have been filed by the Company for all years and periods for which any returns, reports, or estimates were due. All taxes shown thereby to be payable have been paid or adequate provisions made therefor. To the best of the Company's knowledge, the provision for taxes shown on the latest balance sheet of the Company is adequate to cover the liability of the Company to that date for all taxes based on the income, sales, business, or assets of the Company. No unexpired waivers executed by the Company of the statute of limitations with respect to foreign, federal, or state income taxes are in effect. The latest federal income tax return of the Company which has been examined by the Internal Revenue Service is the return for the year ended September 30, 1964. Any deficiencies proposed as a result of examinations of the foreign, federal, or state income tax returns of the Company were settled and paid in full prior to September 30, 1967.

(s) (i) Proper and accurate amounts have been withheld by the Company from its employees for all periods in full and complete compliance with the tax withholding provisions of applicable federal and state laws; (ii) proper and accurate federal and state returns have been filed by the Company for all periods for which returns were due with respect to income tax withholding, social security,

and unemployment taxes; and the amounts shown thereon to be due and payable have been paid in full or adequate provision therefor included in the latest balance sheet of the Company; (iii) hours worked by, and payment made to, employees of the Company have not been in violation of the Fair Labor Standards Act or any applicable state laws dealing with such matters; and (iv) all payments due from the Company on account of employee pension benefits and employee health and welfare insurance have been paid or accrued as a liability on the books of the Company.

(t) The Company has in force all policies of insurance described in the Letter; the Company will use all reasonable efforts to have in force on the Closing Date policies of insurance of substantially the same character and coverage as those described in the Letter; and the Company will notify Beatrice in writing of any material changes in insurance coverage occurring prior to the Closing.

(u) There is no material asset used or required by the Company in the conduct of its business which is not either owned by it or leased to it under one of the leases listed in the Letter.

(v) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby do not conflict with or result in a breach of any of the terms, provisions, or conditions of the Articles of Incorporation or By-Laws of the Company or any statute, regulation, or court or administrative order or process, or any agreement or instrument to which the Company is a party or

by which it is bound or constitute a default thereunder. The business of the Company is not, to the best of its knowledge, conducted in violation of any law, ordinance, or regulation of any governmental entity.

(w) The Company, by its Board of Directors and stockholders, has taken all requisite corporate action to approve this Agreement, the sale of its assets and business to Beatrice, and the change of its corporate name, all as contemplated by this Agreement; and the Company has delivered to Beatrice a certified copy of the resolutions duly adopted by its Board of Directors and stockholders in connection therewith.

(x) None of the buildings, structures, and improvements located on the real estate described in the Letter do, and on the Closing Date none of such buildings, structures, or improvements will, encroach on adjoining real estate, and all such buildings, structures, and improvements are, and on the Closing Date will be, located and constructed in conformance with all "setback" lines, easements, or other restrictions or rights of record or that have been established by an applicable zoning or building ordinance, and there are, and on the Closing Date will be, no encroachments upon said real estate by buildings, structures, or improvements located upon adjoining real estate.

(y) The improvements located on the real estate described in the Letter are not the subject of any official complaint or notice of violation of any applicable zoning ordinance or building code and no such violation is known to exist and there is no zoning ordinance or building code or use or occupancy restriction or condemnation proceeding pending or to the

knowledge of the Company threatened, which would preclude or impair the use of that real estate or the improvements thereon by the Company or Beatrice, as the case may be, for the purposes for which they are presently used.

(z) The Company has not sustained a loss on account of fire, flood, accident, or other calamity of such character as to interfere materially with the continued operation of its business unless such loss is fully insured against.

9. (a) The Company agrees to indemnify and hold harmless Beatrice against any loss, damage, or expense (including reasonable attorneys' fees) net of current or future tax benefits suffered by Beatrice resulting from (i) any breach by the Company of this Agreement, (ii) any inaccuracy in or breach of any of the representations, warranties, or covenants made by the Company herein or in the Letter, and (iii) any inaccuracy or misrepresentation in the Letter or in a certificate or affidavit delivered by the Company at the Closing in accordance with the provisions of paragraph 14 hereof. The Company, or the stockholders substituted for the Company under paragraph 4(c) hereof, shall satisfy its obligations under this subparagraph within thirty days after determination of the amount thereof pursuant to paragraph 9(b). If the amount of such obligation as set forth in such notice is not paid in cash within such thirty-day period, the shares deposited in escrow pursuant to paragraph 4(c) hereof shall be applied in payment of any such loss, damage, or expense at the expiration of such thirty-day period, or at such earlier time as the Company or the stockholder designated to act pursuant to paragraph 4(c) hereof shall designate in writing to the Escrowee and the Escrowee shall then transfer and deliver to Beatrice

such number of the escrowed shares as shall then have an aggregate market value (computed to the nearer whole share) equal to the amount of such loss, damage, or expense. The market value of the escrowed shares to be used to calculate the aggregate market value referred to in the preceding sentence of this paragraph 9(a) shall be the closing price of Beatrice Common Stock on the New York Stock Exchange, on the business day immediately preceding the date of such transfer, as reported in the Midwest Edition of The Wall Street Journal. The liability of the Company hereunder shall not, however, be limited to the escrowed shares. Under no event shall any stockholder of the Company, other than Herbert D. Hammond, Nancy Hammond, Charles Robins, or Mary L. Robins, be liable to Beatrice for any such loss, damage, or expense.

(b) Beatrice shall promptly notify the Company or the person designated to act for the Company under paragraph 4(c) hereof of the specific nature of any claim or demand for payment of any debt, liability or other claim by it for misrepresentation, breach of warranty, breach of covenant, or right of indemnification under this Agreement. The Company, or such designated person, shall have the right to contest any claim or demand asserted against Beatrice or the Company and Beatrice shall have the right to cooperate in the defense of any said claim and shall make available to the Company or its representatives all records and other materials required by the Company for its use in contesting any such liability.

(c) Beatrice agrees to indemnify and hold harmless the Company against any loss, damage, or expense

(including reasonable attorneys' fees) suffered by the Company resulting from (i) any breach by Beatrice of this Agreement, or (ii) any inaccuracy in or breach of any of the representations, warranties, or covenants made by Beatrice herein.

10. Beatrice warrants and represents to and covenants with the Company, its successors and assigns, (which warranties, representations, and covenants shall survive the Closing regardless of what investigations the Company shall have made with respect thereto prior to the Closing), as follows:

(a) Beatrice is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware.

(b) Beatrice has taken all requisite corporate action to approve this Agreement and the issuance of its shares of Common Stock deliverable to the Company hereunder.

(c) All shares of Common Stock deliverable to the Company hereunder shall be voting stock validly issued, fully paid, and nonassessable, free and clear of all liens and encumbrances.

(d) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby do not conflict with or result in a breach of any of the terms, provisions, or conditions of the Certificate of Incorporation or By-Laws of Beatrice or any statute, regulation, or court or administrative order or process, or any agreement or instrument to which Beatrice is a party or by

which it is bound or constitute a default thereunder. The business of Beatrice is not, to the best of its knowledge, conducted in violation of any law, ordinance, or regulation of any governmental entity.

(e) Beatrice will bear full responsibility and expense in connection with any violation, or alleged violation, of the anti-trust laws or other trade regulation laws resulting from the consummation of this Agreement except that the liability for (including reasonable attorneys' fees) any such violation or alleged violation arising out of the Company's operation prior to the Closing shall be the Company's.

11. The Company shall at all reasonable times prior to the Closing make its plant, inventories, books of account, and records available for examination and inspection by Beatrice and its agents. Without limiting the generality of the foregoing, Beatrice shall have the right to audit the books and records of the Company prior to the Closing Date. No such examination, inspection, or audit by Beatrice or its agents shall in any way affect, diminish, or terminate any of the representations, warranties, or covenants of the Company herein expressed. Beatrice agrees that if no Closing occurs, it will treat as confidential and will not use or disclose to others, or permit persons under its control to use or disclose to others, any information concerning the Company or this transaction obtained by Beatrice hereunder.

12. Pending the Closing, the Company will use its best efforts to preserve its business organization intact, to keep available to Beatrice the services of its present

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employees, and to preserve its good will with suppliers and customers, and others having business relationships with the Company.

13. The Company agrees to furnish Beatrice with a copy of the federal and state income tax returns of the Company for the year ended on September 30, 1967 and for each succeeding year that it is in existence at least thirty days before filing any said return. In the event that the Company shall realize gross taxable income during that part of its fiscal year following the Closing Date, the liability for federal and state income taxes of the Company for the period prior to the Closing Date, which has been assumed hereunder by Beatrice, shall be limited to the amount of taxes which would have been payable had no gross taxable income been realized and no deductible expenses paid or incurred by the Company after the Closing Date.

14. The obligations of Beatrice hereunder (including the obligation of Beatrice to close the transaction herein contemplated) are subject to the following conditions precedent:

(a) The warranties and representations made by the Company herein to Beatrice shall be true and correct on and as of the Closing Date with the same effect as if such warranties and representations had been made on and as of the Closing Date and the Company shall have performed and complied with all agreements, covenants, and conditions on its part required to be performed or complied with on or prior to the Closing Date; and at the Closing Beatrice shall have received a certificate executed by the President of the Company to the foregoing effect.

(b) Prior to the Closing the Company shall not have sustained a loss on account of fire, flood, accident, or other calamity of such character as to interfere materially with the continued operation of its business and which, in the reasonable judgment of Beatrice, renders it inadvisable to consummate this Agreement, unless such loss shall have been fully insured against; and at the Closing Beatrice shall have received a certificate executed by the President of the Company stating whether or not the Company has sustained any such loss.

(c) Between the date of this Agreement and the Closing Date, no material adverse change shall have occurred in the financial condition, assets, liabilities, business, or property of the Company, and at the Closing Beatrice shall have received a certificate executed by the President of the Company stating that no such change has occurred.

(d) On the Closing Date, except as set forth in the Letter, (i) there shall be no material litigation at law or in equity, and no material proceedings before any Commission or other administrative or regulatory authority, pending, or to the Company's knowledge, threatened against or affecting the business or property of the Company or its right to carry on its business as conducted on September 30, 1967, the date hereof, and the Closing Date; (ii) the Company shall not have any liabilities of any nature, whether accrued, absolute, contingent, or otherwise, other than those disclosed or fully reflected or reserved against in the September 30, 1967 balance sheet of the Company, those incurred in the

ordinary course of business since that date, those disclosed in the Letter, those fully covered by insurance, and those agreed to in writing by Beatrice; (iii) at least ninety-nine percent (99%) of inventories of the Company shall be in good condition or usable in the ordinary course of its business; (iv) there shall be no zoning or building law or ordinance, use or occupancy restriction of record or condemnation proceeding pending, or to the knowledge of the Company threatened, which would preclude or impair the use of the real estate described in the Letter and the improvements thereon and therein by the Company or Beatrice for the purposes for which they were used by the Company on September 30, 1967, the date hereof, and are used on the Closing Date, except as stated in the Letter; and such real estate and improvements thereon are not the subject of any material official complaint or notice of violation of any applicable zoning or building code or ordinance, and no such material violation is known to exist; (v) the consummation of the transactions contemplated by this Agreement shall not conflict with or result in a breach of any of the terms, provisions, or conditions of the Articles of Incorporation or By-Laws of the Company or any statute or administrative regulations or of any order, writ, injunction, judgment, or decree of any court or governmental authority or of any agreement or instrument to which the Company is a party or by which it is bound or constitute a default thereunder; and at the Closing Beatrice shall have received a certificate to all of the foregoing effects (as specified in (i) through (v) next above) executed by the President of the Company.

(e) No formal proceeding or formal investigation

shall have been commenced by any governmental agency or any other person or entity with respect to any of the transactions contemplated in this Agreement.

(f) At the Closing there shall be delivered to Beatrice the opinion of Frank, Bernstein, Conaway & Goldman, the Company's counsel, dated the Closing Date, in form and substance satisfactory to Beatrice and its counsel, stating that:

(i) the Company is a corporation duly organized, validly existing, and in good standing under the laws of the State of Maryland;

(ii) this Agreement has been duly authorized, executed, and delivered by the Company and is binding upon the Company in accordance with its terms;

(iii) all requisite action has been taken by the directors and stockholders of the Company under the laws of the State of Maryland to enable it legally to fulfill the obligations incurred by it under the provisions of this Agreement, including, but not limited to, the transfer of its business and assets to Beatrice as contemplated herein and the change of its corporate name (at the time and in the manner referred to);

(iv) the deeds, bills of sale, and other instruments of conveyance, transfer, and assignment delivered to Beatrice pursuant to paragraph 4(a) hereof are sufficient to vest in Beatrice the interest of the

Company in the assets, business, and property contemplated to be conveyed, transferred, and assigned to Beatrice hereunder; and

(v) to the best of their knowledge and belief none of the warranties, representations, or covenants of the Company herein contained have been breached or are inaccurate.

(g) All proceedings to be taken in connection with the consummation of the transactions contemplated by this Agreement, and all documents incident thereto, shall be satisfactory in form and substance to Beatrice and its counsel and Beatrice and its counsel shall have received copies of such documents as Beatrice and its counsel may reasonably request in connection with said transactions.

(h) Beatrice shall have received the surveys required by paragraph 6(a)(ii) and at the Closing shall have received a certificate signed by the President of the Company to the effect that nothing occurred after the date of each such survey and on or prior to the Closing Date that would alter the accuracy of any such survey.

(i) At the Closing the Company shall have delivered to Beatrice an owner's title insurance policy on the ALTA 1962 Owner's Form, with extended coverage endorsement guaranteeing over the standard exceptions to title customarily contained in such policies, covering each parcel of real estate described in the Letter as owned by the Company and covered by a preliminary report on title required to be delivered to Beatrice pursuant to the terms of paragraph 6(a)(i) hereof,

issued by the title company which issued the preliminary report on title required by paragraph 6(a)(1) on each such parcel insuring the fee simple title of Beatrice in each such parcel owned by the Company in the amount set forth in the Letter following the description of such parcel, subject only to the matters set forth in the Letter.

(j) Herbert D. Hammond or William F. Moran shall be alive on the Closing Date.

Beatrice shall have the right to waive any of the foregoing conditions precedent.

15. The obligations of the Company hereunder (including the obligation of the Company to close the transaction herein contemplated) are subject to the following conditions precedent:

(a) All warranties and representations made by Beatrice herein to the Company shall be true and correct in all material respects on and as of the Closing Date with the same effect as if such warranties and representations had been made on and as of the Closing Date, and Beatrice shall have performed and complied with all agreements, covenants, and conditions on its part required to be performed or complied with on or prior to the Closing Date; and at the Closing the Company shall have received a certificate executed by the President or a Vice President of Beatrice to the foregoing effects.

(b) The Common Stock to be delivered at the Closing shall have been listed upon official notice of issuance by the New York Stock Exchange and the Company shall have received a certificate to such effect executed by the President or a Vice President of Beatrice.

(c) No proceeding or formal investigation shall have been commenced by any governmental agency or any other person or entity with respect to any of the transactions contemplated in this Agreement.

(d) At the Closing there shall be delivered to the Company the opinion of Messrs. Winston, Strawn, Smith & Patterson, dated the Closing Date, in form and substance satisfactory to the Company and its counsel, stating that:

(i) Beatrice is a corporation duly organized, validly existing, and in good standing under the laws of Delaware, with full right to enter into this Agreement and perform its obligations hereunder;

(ii) this Agreement has been duly authorized, executed, and delivered by Beatrice and is binding upon Beatrice in accordance with its terms; and

(iii) the aggregate number of shares of Beatrice's Common Stock delivered on the Closing Date to the Company pursuant to this Agreement are validly issued, fully paid, and nonassessable, free and clear of all liens and encumbrances.

(e) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby do not conflict with or result in a breach of any of the terms, provisions, or conditions of the Certificate of Incorporation or By-Laws of Beatrice or any statute, regulation, or court or administrative order or process, or any agreement or instrument to which Beatrice is a party or by which it is bound or constitute a default thereunder. The business of Beatrice is not, to the best of its knowledge, conducted in violation of any law, ordinance, or regulation of any governmental entity.

The Company shall have the right to waive any of the foregoing conditions precedent.

16. Unless otherwise consented to in writing by the Company, Beatrice will not destroy or otherwise dispose of any of the books and records of the Company acquired by Beatrice hereunder without first offering to surrender such books and records or any portion thereof which Beatrice may intend to destroy or dispose of, to the Company, if then in existence, or if not, to Herbert D. Hammond, and Beatrice shall allow the Company's representatives, attorneys, and accountants access to such books and records upon reasonable request and during Beatrice's normal business hours for examination and/or copying.

17. The parties hereto agree that this Agreement was not induced or procured through any person, firm, or

corporation acting as a broker or finder except (a) Alex Brown & Sons, and (b) Bernard F. Lieberman & Associates, Inc. and their fees will be paid by the stockholders of the Company. Beatrice and the Company agree to hold each other harmless from any loss, damage, or expense resulting from any claim by any person, firm, or corporation other than Alex Brown & Sons or Bernard F. Lieberman & Associates, Inc. based upon his having acted as a broker or finder for or in this transaction on behalf of the other party hereto.

18. Unless otherwise notified in writing to the contrary, any notice required or permitted by the terms hereof shall be effectively delivered for all purposes upon deposit in the United States mail, postage prepaid, if directed to the Company, properly addressed to it at 8200 Fisher Road, Baltimore, Maryland, Attention: H. D. Hammond, with a copy to Shale D. Stiller, Esq., Frank, Bernstein, Conaway & Goldman, 1508 First National Bank Building, Baltimore, Maryland 21202; and if directed to Beatrice properly addressed to it at 120 South LaSalle Street, Chicago, Illinois 60603, Attention: William G. Karnes, President, with a copy to Charles J. Calderini, Jr., Winston, Strawn, Smith & Patterson, 1400 First National Bank Building, Chicago, Illinois 60603.

19. This Agreement is being delivered in Chicago, Illinois, and shall be construed according to the laws of that state. It shall be binding upon and inure to the benefit of Beatrice and the Company and their respective successors and assigns.

20. Beatrice may have the right to assign its

rights under this Agreement to a wholly-owned subsidiary of Beatrice, in which event the Company shall at Beatrice's written direction convey its assets to that subsidiary at the Closing, and that subsidiary will, jointly and severally with Beatrice, assume the liabilities agreed to be assumed by Beatrice hereunder. In such event Beatrice will nevertheless deliver such shares of its Common Stock in exchange for such assets as set forth herein.

21. The Company will pay no expenses in connection with this Agreement and the consummation hereof.

22. The Company agrees that at the Closing it will deliver to Beatrice the written agreement of the Company's stockholders to the effect that during the period ending 12 months from the Closing, they will not as a group transfer in the aggregate in excess of 25% in value of the shares of Common Stock received hereunder. For the purposes of this paragraph, the shares of Common Stock so received shall be valued at the mean between the highest and lowest quoted selling prices on the New York Stock Exchange on the date of Closing or, if there are no sales of such stock on said Exchange on such date, then one-half of the unweighted sum of such mean prices on the nearest date before and the nearest date after such dates on which there are such sales. Such prices shall be as reported in the Midwest Edition of The Wall Street Journal.

23. Beatrice agrees that Herbert D. Hammond and Milton D. Swartz shall have the option, by giving written notice to Beatrice not less than 10 days prior to the Closing,

to purchase for cash from the Company any of the insurance policies on his life owned by the Company as shown opposite his name in the Letter for an amount equal to the interpolated terminal reserve of each policy as at the Closing plus the proportionate part of the gross premium last paid before the Closing which covers the period extending beyond the Closing plus accrued dividends to the Closing. Payment may be made in part by the assumption by Hammond or Swartz of indebtedness secured by the policies upon his life if the insurer agrees to release the Company from such indebtedness.

24. Subject to the provisions of paragraphs 22 and 25, Beatrice agrees that, if at any time after the Closing, it files a registration statement under the Securities Act of 1933 (the Act) on Form S-1 or substantially similar form, it will give prompt written notice thereof to the Company. Thereafter, the Company's stockholders as a single group shall have the right for 20 days after the giving of such notice by Beatrice to include in one registration statement any shares of Beatrice's Common Stock which they then desire to transfer. Upon receipt within such 20 days' period of written notice (which shall state the number of shares to be registered and the intended method of distribution thereof) from the stockholders of the Company that they desire to include shares of Common Stock in such registration statement, Beatrice will, at the expense of such person, include those shares in such registration statement and thereafter will use its best efforts as expeditiously as possible to effect the registration under the Act of those shares. At Beatrice's request the holders of any shares included in any such registration statement will agree

not to offer any of such shares for a period specified by Beatrice not to exceed 90 days from the effective date of the registration statement. Expenses to be paid by such person shall be limited to his pro rata share of the total expenses in connection with such registration statement. Beatrice may allocate expenses between the holders of its securities being registered as Beatrice determines and such allocation shall be binding and conclusive.

25. (a) Beatrice shall be required to include shares of Common Stock pursuant to paragraph 24 only if all of the following conditions are satisfied: (i) the person selling shall undertake and agree with Beatrice to complete the sale or other disposition of such Common Stock (in accordance with the intended methods of distribution thereof, as aforesaid) or withdraw from sale any unsold Common Stock within 9 months after the date on which such Common Stock has been effectively registered under the Act, (ii) the person selling shall furnish Beatrice such information regarding the Common Stock held by him and the intended method of disposition thereof as Beatrice shall reasonably request and as shall be required under then existing law in connection with the action to be taken by Beatrice, (iii) if the intended method of distribution in any instance specifies a distribution through underwriters, as that term is defined in Section 2(11) of the Act, the principal underwriters shall be reasonably satisfactory to Beatrice, (iv) the proposed method of distribution is not through the facilities of a national securities exchange, (v) such sale by the person selling shall not result in a breach of the covenants of the Company's stockholders

referred to in paragraph 14, and (vi) the selling person shall furnish Beatrice, at its request, with such security as Beatrice may require for the payment of such person's expenses in connection with such registration.

(b) Anyone selling pursuant to this Agreement severally agrees to indemnify Beatrice, each of its directors, each of its officers who have signed such registration statement, and each person, if any, who controls Beatrice within the meaning of the Act, against such losses, claims, damages, or liabilities to which Beatrice or any director, officer, or controlling person may become subject under the Act or otherwise, insofar as such losses, claims, damages, or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of any material fact contained in such registration statement, any prospectus or preliminary prospectus, or any amendment or supplement thereto, or arise out of or are based upon an omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading; in each case, to the extent, but only to the extent that such statement or omission was made in reliance upon written information furnished to Beatrice by such person specifically for use in the preparation of such registration statement; and will reimburse Beatrice and any such director, officer, or controlling party for any legal or other expenses incurred by such indemnified party in connection with the defense thereof.

(c) Beatrice agrees to indemnify and hold harmless any person selling pursuant to this Agreement, each person named in any registration statement as an underwriter of any Common Stock for such person, and each person, if any, who controls such person or such underwriter within the meaning of the Act, against such losses, claims, damages, or liabilities to which such person, underwriter, or controlling person may become subject under the Act or otherwise, insofar as such losses, claims, damages, or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of any material fact contained in a registration statement filed by Beatrice, any prospectus or preliminary prospectus contained therein, or any amendment or supplement thereto or arise out of or are based upon an omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, unless such statement or omission was made in reliance upon written information furnished to Beatrice by such person or such underwriter, specifically for use in the preparation of such registration statement; and will reimburse such person, underwriter, and controlling person for any legal or other expenses incurred by such indemnified party in connection with the defense thereof.

(d) No indemnifying party under any of the indemnity agreements referred to in paragraphs 25 (b) and (c) hereof shall be liable under such indemnity agreement unless, promptly after any written communication asserting a claim in respect of which payments may be sought pursuant to such indemnity agreement shall have been received by any party

indemnified thereunder, either the indemnified party shall give written notice thereof to the indemnifying party or the indemnifying party receives actual notice thereof. The indemnifying party shall be entitled to participate at its own expense in the defense of, or, if it so elects, jointly with any other indemnifying party similarly notified, to assume the defense of any suit or administrative or other proceeding brought to enforce or determine any such liability. After notice by an indemnifying party of its election to assume the defense of any such suit or administrative or other proceeding, the indemnifying party shall not be liable for any legal or other expenses subsequently incurred by the indemnified party in connection with the defense thereof other than reasonable costs of investigation. The indemnifying party shall not be required to indemnify any person for payment made in settlement of any suit or claim unless such payment is consented to by the indemnifying party.

(e) Beatrice's obligation to register any Common Stock in accordance with paragraph 24 shall terminate in the event that any stockholder of the Company shall transfer any shares of Common Stock in violation of this Agreement or the Act.

(f) If, within 15 days after receipt by it of a written request to include shares of Common Stock in any registration statement, Beatrice shall notify the person requesting registration in writing that Beatrice desires to purchase the shares of Common Stock with respect to which registration is requested, such person shall sell to Beatrice and Beatrice shall purchase from him all of such Common Stock

with respect to which registration is requested, so long as such purchase does not result in a breach of the covenants contained in paragraph 22. Such purchase and sale (i) shall take place at the principal office of Beatrice on the business day specified by Beatrice in the notice, which day shall be not less than 5 days nor more than 20 days following the giving of such notice by Beatrice, and (ii) shall be for a cash consideration against delivery of duly endorsed certificates therefor equal to 95% of the unweighted arithmetical average of the closing prices on the New York Stock Exchange of the Common Stock as reported in the Midwest Edition of The Wall Street Journal on each of the days in the four full business weeks (Monday through Friday, inclusive) preceding the week in which registration was requested.

26. If and whenever Beatrice is required by this Agreement to include shares of Common Stock in a registration statement, Beatrice will, as expeditiously as possible:

(a) prepare and file with the Securities and Exchange Commission (the Commission) a registration statement with respect to such Common Stock and use its best efforts to cause such registration statement to become effective;

(b) prepare and file with the Commission such amendments and supplements to such registration statement and the prospectus comprised therein as may be necessary to keep such registration statement effective and to comply with the provisions of the Act with respect to the sale or other disposition of all securities covered by such registration statement, in accordance with the intended method or methods of

distribution thereof set forth in such registration statement, for a period of not more than 9 months after the original effective date of such registration statement;

(c) furnish to any person selling pursuant to this Agreement such number of copies of a statutory prospectus or other prospectus, including a preliminary prospectus, in conformity with the requirements of the Act, and such other documents as he may reasonably request pursuant to the terms hereof in order to facilitate the public sale or other disposition of the Common Stock owned by him, in accordance with the intended method or methods of distribution thereof set forth in the registration statement comprising such prospectus;

(d) use its best efforts to register or qualify the Common Stock covered by such registration statement under such other securities or blue sky laws of such states as the person selling pursuant to this Agreement shall request, and do any and all acts and things which may be necessary or advisable to enable such holder to consummate the public sale or other disposition in such states of the Common Stock owned by him, in accordance with the intended method of distribution thereof by him set forth in such registration statement provided that in no event shall Beatrice be obligated to qualify to do business in any state where it is not now so qualified or to take any action which would subject it to tax or the service of unlimited process in any state where it is not now so subject; and

(e) execute such agreements with underwriters and take such other actions in cooperation with such underwriters (subject to the provisions hereinabove set forth with

respect to the acceptability of the underwriters to Beatrice) which are usually and customarily required of issuers in connection with secondary offerings of shares of stock through underwriters and which are reasonably acceptable to Beatrice counsel.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective presidents or vice presidents and their respective corporate seals to be hereunto affixed and to be properly attested by their respective secretaries or assistant secretaries.

BEATRICE FOODS CO.

By *Lee Schlytz*
President

Attest:

William H. Mitchell
Secretary

THE FARBOIL CO.

By *Robert O'Hanley*
President

Attest:

Nancy Hammer
Secretary

State of Delaware



Office of Secretary of State

I, GLENN C. KENTON, SECRETARY OF STATE OF THE STATE OF DELAWARE DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF BEATRICE FOODS CO. FILED IN THIS OFFICE ON THE FIFTH DAY OF JUNE, A.D. 1984, AT 11:15 O'CLOCK A.M.

| | | | | | | | | |

Glenn C. Kenton, Secretary of State

AUTHENTICATION: 10261067

DATE: 06/05/1984

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JUN 5 1984 11:15 AM

CERTIFICATE OF AMENDMENT
TO THE
CERTIFICATE OF INCORPORATION
OF
BEATRICE FOODS CO.

William C. Keaton
SECRETARY OF STATE

BEATRICE FOODS Co., a corporation organized and existing under the laws of the State of Delaware (the "Company"), hereby certifies as follows:

1. At a meeting of the Board of Directors of the Company held on March 1, 1984, the Board of Directors of the Company proposed certain amendments to the Certificate of Incorporation of the Company and adopted the following resolutions setting forth the proposed amendments and declaring their advisability:

RESOLVED, that the Board of Directors of the Company deems it advisable to amend Article I of the Certificate of Incorporation of the Company to read as follows:

"ARTICLE I

The name of the Corporation is Beatrice Companies, Inc."

RESOLVED, that the Board of Directors of the Company deems it advisable to amend Article IV of the Certificate of Incorporation of the Company by deleting the first paragraph thereof, which now reads as follows:

"The total number of shares of all classes of stock which the Corporation shall have authority to issue is 220,000,000, of which 20,000,000 shares shall be shares of Preference Stock without par value (hereinafter "Preference Stock") and 200,000,000 shares shall be shares of Common Stock without par value (hereinafter "Common Stock")."

and substituting in lieu of such paragraph the following:

"The total number of shares of all classes of stock which the Corporation shall have authority to issue is 350,000,000, of which 50,000,000 shares shall be shares of Preference Stock without par value (hereinafter "Preference Stock") and 300,000,000 shares shall be shares of Common Stock without par value (hereinafter "Common Stock")."

RESOLVED, that the Board of Directors of the Company deems it advisable to amend the Certificate of Incorporation of the Company as follows:

- (a) By renumbering the present Article VII as Article X.
- (b) By adding a new Article VII, which shall read as follows:

"ARTICLE VII

A. *Number, Election And Terms Of Directors.* Except as otherwise fixed by or pursuant to the provisions of Article IV hereof relating to the rights of the holders of Preference Stock to elect additional directors under specified circumstances, the number of the directors of the Corporation shall be fixed from time to time by or pursuant to the by-laws of the Corporation. The directors, other than those who may be elected by the holders of Preference Stock, shall be classified, with respect to the time for which they severally hold office, into three classes, as nearly equal in number as possible, as shall be provided in the manner specified in the by-laws of the Corporation, one class to be originally elected for a term expiring at the annual meeting of stockholders to be held in 1985, another class to be originally elected for a term expiring at the annual meeting of stockholders to be held in 1986, and another class to be originally elected for a term expiring at the annual meeting of stockholders to be held in 1987, with each class to hold office until its successor is elected

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and qualified. At each annual meeting of the stockholders of the Corporation, the successors of the class of directors whose term expires at that meeting shall be elected to hold office for a term expiring at the annual meeting of stockholders held in the third year following the year of their election.

B. *Stockholder Nomination Of Director Candidates.* Advance notice of stockholder nominations for the election of directors shall be given in the manner provided in the by-laws of the Corporation.

C. *Newly Created Directorships And Vacancies.* Except as otherwise provided for or fixed by or pursuant to the provisions of Article IV hereof relating to the rights of the holders of Preference Stock to elect directors under specified circumstances, newly created directorships resulting from any increase in the number of directors and any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other cause shall be filled by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the Board of Directors. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the class of directors in which the new directorship was created or the vacancy occurred and until such director's successor shall have been elected and qualified. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

D. *Removal.* Subject to the rights of any Preference Stock to elect directors under specified circumstances, any director may be removed from office, with or without cause, and only by the affirmative vote of the holders of 80% of the combined voting power of the then outstanding shares of stock entitled to vote generally in the election of directors, voting together as a single class.

E. *Amendment Or Repeal.* Notwithstanding anything contained in this Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least 80% of the voting power of all shares of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to alter, amend, adopt any provision inconsistent with or repeal this Article VII.”;

(c) By adding a new Article VIII, which shall read as follows:

“ARTICLE VIII

Any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of such holders and may not be effected by any consent in writing by such holders. Except as otherwise required by law and subject to the rights of the holders of Preference Stock, special meetings of stockholders of the Corporation may be called only by the Board of Directors pursuant to a resolution approved by a majority of the entire Board of Directors. Notwithstanding anything contained in this Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least 80% of the voting power of all shares of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to alter, amend, adopt any provision inconsistent with or repeal this Article VIII.”; and

(d) By amending Article V to read as follows:

“ARTICLE V

The Board of Directors shall have power to adopt, amend and repeal the by-laws of the Corporation (except so far as the by-laws of the Corporation adopted by the stockholders shall otherwise provide). Any by-laws adopted by the directors under the powers conferred

hereby may be amended or repealed by the directors or by the stockholders. Notwithstanding the foregoing and anything contained in this Certificate of Incorporation to the contrary, Sections 1.10, 2.2, 2.3 and 9.3 of the by-laws shall not be amended or repealed and no provision inconsistent therewith shall be adopted without the affirmative vote of the holders of at least 80% of the voting power of all the shares of the Corporation entitled to vote generally in the election of directors, voting together as a single class. Notwithstanding anything contained in this Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least 80% of the voting power of all the shares of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to alter, amend, adopt any provision inconsistent with or repeal this Article V."

RESOLVED, that the Board of Directors of the Company deems it advisable to amend the Certificate of Incorporation of the Company by adding a new Article IX, which shall read as follows:

"ARTICLE IX

A. *Vote Required For Certain Business Combinations.*

1. In addition to any affirmative vote required by law or this Certificate of Incorporation, and except as otherwise expressly provided in Section B of this Article IX:

(a) any merger or consolidation of the Corporation or any Subsidiary (as hereinafter defined) with (i) any Interested Shareholder (as hereinafter defined) or (ii) any other corporation (whether or not itself an Interested Shareholder) which is, or after such merger or consolidation would be, an Affiliate (as hereinafter defined) of an Interested Shareholder; or

(b) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions) to or with any Interested Shareholder or any Affiliate of any Interested Shareholder of any assets of the Corporation or any Subsidiary having an aggregate Fair Market Value of \$25,000,000 or more; or

(c) the issuance or transfer by the Corporation or any Subsidiary (in one transaction or a series of transactions) of any securities of the Corporation or any Subsidiary to any Interested Shareholder or any Affiliate of any Interested Shareholder in exchange for cash, securities or other property (or a combination thereof) having an aggregate Fair Market Value of \$25,000,000 or more; or

(d) the adoption of any plan or proposal for the liquidation or dissolution of the Corporation proposed by or on behalf of an Interested Shareholder or any Affiliate of any Interested Shareholder; or

(e) any reclassification of securities (including any reverse stock split), or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any of its Subsidiaries or any other transaction (whether or not with or into or otherwise involving an Interested Shareholder) which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class of equity or convertible securities of the Corporation or any Subsidiary which is directly or indirectly owned by any Interested Shareholder or any Affiliate of any Interested Shareholder;

shall require the affirmative vote of the holders of at least 80% of the voting power of the then outstanding shares of stock of the Corporation entitled to vote generally in the election of directors (the "Voting Stock"), voting together as a single class (it being understood that for purposes of this Article IX, each share of the Voting Stock shall have the number of votes granted to it pursuant to Article IV of this Certificate

of Incorporation). Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that a lesser percentage may be specified, by law or in any agreement with any national securities exchange or otherwise.

2. The term "Business Combination" as used in this Article IX shall mean any transaction which is referred to in any one or more of subparagraphs (a) through (e) of paragraph 1 of this Section A.

B. When Higher Vote Is Not Required. The provisions of Section A of this Article IX shall not be applicable to any particular Business Combination, and such Business Combination shall require only such affirmative vote as is required by law and any other provision of this Certificate of Incorporation, if all of the conditions specified in either of the following paragraphs 1 and 2 are met:

1. The Business Combination shall have been approved by a majority of the Disinterested Directors (as hereinafter defined).

2. All of the following conditions shall have been met:

(a) The aggregate amount of the cash and the Fair Market Value (as hereinafter defined) as of the date of the consummation of the Business Combination of consideration other than cash to be received per share by holders of Common Stock in such Business Combination shall be at least equal to the higher of the following:

I. (if applicable) the Highest Per Share Price (as hereinafter defined) (including the brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Shareholder for any shares of Common Stock acquired by it (X) within the two-year period immediately prior to the first public announcement of the proposal of the Business Combination (the "Announcement Date") or (Y) in the transaction in which it became an Interested Shareholder, whichever is higher; and

II. the Fair Market Value per share of Common Stock on the Announcement Date or on the date on which the Interested Shareholder became an Interested Shareholder (such latter date is referred to in this Article IX as the "Determination Date"), whichever is higher.

(b) The aggregate amount of the cash and the Fair Market Value as of the date of the consummation of the Business Combination of consideration other than cash to be received per share by holders of shares of any class of outstanding Voting Stock other than Common Stock shall be at least equal to the highest of the following (it being intended that the requirements of this subparagraph (b) shall be required to be met with respect to every such class of outstanding Voting Stock, whether or not the Interested Shareholder has previously acquired any shares of a particular class of Voting Stock):

I. (if applicable) the Highest Per Share Price (as hereinafter defined) (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Shareholder for any shares of such class of Voting Stock acquired by it (X) within the two-year period immediately prior to the Announcement Date or (Y) in the transaction in which it became an Interested Shareholder, whichever is higher;

II. (if applicable) the highest preferential amount per share to which the holders of shares of such class of Voting Stock are entitled in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation; and

III. the Fair Market Value per share of such class of Voting Stock on the Announcement Date or on the Determination Date, whichever is higher.

(c) The consideration to be received by holders of a particular class of outstanding Voting Stock (including Common Stock) shall be in cash or in the same form as the Interested Shareholder has previously paid for shares of such class of Voting Stock. If the Interested Shareholder has paid for shares of any class of Voting Stock with varying forms of consideration, the form of consideration for such class of Voting Stock shall be either cash or the form used to acquire the largest number of shares of such class of Voting Stock previously acquired by it.

(d) After such Interested Shareholder has become an Interested Shareholder and prior to the consummation of such Business Combination: (i) except as approved by a majority of the Disinterested Directors, there shall have been no failure to declare and pay at the regular date therefor any full quarterly dividends (whether or not cumulative) on the outstanding Preference Stock; (ii) there shall have been (x) no reduction in the annual rate of dividends paid on the Common Stock (except as necessary to reflect any subdivision of the Common Stock), except as approved by a majority of the Disinterested Directors, and (y) an increase in such annual rate of dividends as necessary to reflect any reclassification (including any reverse stock split), recapitalization, reorganization or any similar transaction which has the effect of reducing the number of outstanding shares of the Common Stock, unless the failure so to increase such annual rate is approved by a majority of the Disinterested Directors; and (iii) such Interested Shareholder shall have not become the beneficial owner of any additional shares of Voting Stock except as part of the transaction which results in such Interested Shareholder becoming an Interested Shareholder.

(e) After such Interested Shareholder has become an Interested Shareholder, such Interested Shareholder shall not have received the benefit, directly or indirectly (except proportionately as a stockholder), of any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantages provided by the Corporation, whether in anticipation of or in connection with such Business Combination or otherwise.

(f) A proxy or information statement describing the proposed Business Combination and complying with the requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder (or any subsequent provisions replacing such Act, rules or regulations) shall be mailed to public stockholders of the Corporation at least 30 days prior to the consummation of such Business Combination (whether or not such proxy or information statement is required to be mailed pursuant to such Act or subsequent provisions).

C. *Certain Definitions.* For the purposes of this Article IX:

1. A "person" shall mean any individual, firm, corporation or other entity.
2. "Interested Shareholder" shall mean any person (other than the Corporation or any Subsidiary) who or which:

(a) is the beneficial owner, directly or indirectly, of more than 20% of the voting power of the outstanding Voting Stock; or

(b) is an Affiliate of the Corporation and at any time within the two-year period immediately prior to the date in question was the beneficial owner, directly or indirectly, of 20% or more of the voting power of the then outstanding Voting Stock; or

(c) is an assignee of or has otherwise succeeded to any shares of Voting Stock which were at any time within the two-year period immediately prior to the date in question beneficially owned by any Interested Shareholder, if such assignment or succession shall have occurred in the course of a transaction or series of transactions not involving a public offering within the meaning of the Securities Act of 1933.

3. A person shall be a "beneficial owner" of any Voting Stock:

(a) which such person or any of its Affiliates or Associates (as hereinafter defined) beneficially owns, directly or indirectly; or

(b) which such person or any of its Affiliates or Associates has (i) the right to acquire (whether such right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (ii) the right to vote pursuant to any agreement, arrangement or understanding; or

(c) which are beneficially owned, directly or indirectly, by any other person with which such person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purposes of acquiring, holding, voting or disposing of any shares of Voting Stock.

4. For the purposes of determining whether a person is an Interested Shareholder pursuant to paragraph 2 of this Section C, the number of shares of Voting Stock deemed to be outstanding shall include shares deemed owned through application of paragraph 3 of this Section C but shall not include any other shares of Voting Stock which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

5. "Affiliate" or "Associate" shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on March 1, 1984.

6. "Subsidiary" means any corporation of which a majority of any class of equity security is owned, directly or indirectly, by the Corporation; provided, however, that for the purposes of the definition of Interested Shareholder set forth in paragraph 2 of this Section C, the term "Subsidiary" shall mean only a corporation of which a majority of each class of equity security is owned, directly or indirectly, by the Corporation.

7. "Disinterested Director" means any member of the Board of Directors who is unaffiliated with the Interested Shareholder and was a member of the Board of Directors prior to the time that the Interested Shareholder became an Interested Shareholder, and any successor of a Disinterested Director who is unaffiliated with the Interested Shareholder and is recommended to succeed a Disinterested Director by a majority of Disinterested Directors then on the Board of Directors.

8. "Fair Market Value" means: (a) in the case of stock, the highest closing sale price during the 30-day period immediately preceding the date in question of a share of such stock on the Composite Tape for New York Stock Exchange-Listed Stocks, or, if such stock is not quoted on the Composite Tape, on the New York Stock Exchange, or, if such stock is not listed on such Exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934 on which such stock is listed, or, if such stock is not listed on any such exchange, the highest closing bid quotation with respect to a share of such stock during the 30-day period preceding the date in question on the National Association of Securities Dealers, Inc. Automated Quotations Systems or any system then in use, or if no such quotations are available, the fair market value on the date in question of a share of such stock as determined by the

Board of Directors in good faith, in each case with respect to any class of stock, appropriately adjusted for any dividend or distribution in shares of such stock or any stock split or reclassification of outstanding shares of such stock into a greater number of shares of such stock or any combination or reclassification of outstanding shares of such stock into a smaller number of shares of such stock; and (b) in the case of property other than cash or stock, the fair market value of such property on the date in question as determined by the Board of Directors in good faith.

9. References to "Highest Per Share Price" shall in each case with respect to any class of stock reflect an appropriate adjustment for any dividend or distribution in shares of such stock or any stock split or reclassification of outstanding shares of such stock into a greater number of shares of such stock or any combination or reclassification of outstanding shares of such stock into a smaller number of shares of such stock.

10. In the event of any Business Combination in which the Corporation survives, the phrase "other consideration to be received" as used in subparagraphs (a) and (b) of paragraph 2 of Section B of this Article IX shall include the shares of Common Stock and/or the shares of any other class of outstanding Voting Stock retained by the holders of such shares.

D. Powers Of the Board Of Directors. A majority of the directors of the Corporation shall have the power and duty to determine for the purposes of this Article IX, on the basis of information known to them after reasonable inquiry, (a) whether a person is an Interested Shareholder, (b) the number of shares of Voting Stock beneficially owned by any person, (c) whether a person is an Affiliate or Associate of another and (d) whether the assets which are the subject of any Business Combination have, or the consideration to be received for the issuance or transfer of securities by the Corporation or any Subsidiary in any Business Combination has, an aggregate Fair Market Value of \$25,000,000 or more.

E. No Effect On Fiduciary Obligations Of Interested Shareholders. Nothing contained in this Article IX shall be construed to relieve any Interested Shareholder from any fiduciary obligation imposed by law.

F. Amendment Or Repeal. Notwithstanding any other provisions of this Certificate of Incorporation or the by-laws of the Corporation (and notwithstanding the fact that a lesser percentage may be specified by law, this Certificate of Incorporation or the by-laws of the Corporation), the affirmative vote of the holders of 80% or more of the outstanding Voting Stock, voting together as a single class, shall be required to amend or repeal, or adopt any provisions inconsistent with this Article IX."

2. At the annual meeting of stockholders of the Company held on June 5, 1984, the amendments set forth in paragraph 1 above were adopted by the stockholders of the Company.

3. The amendments set forth in paragraph 1 above have been duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of Delaware.

IN WITNESS WHEREOF, this Certificate of Amendment has been executed this 5th day of June, 1984.

BEATRICE FOODS CO.

By 
Douglas J. Stanard, Vice President

(SEAL)

ATTEST

By 
M. Patricia Kehoe, ~~Assistant~~ Secretary

RECEIVED FOR RECORD

JUN 5 1984

LEO J. DUGAN, Jr., Recorder

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